IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

WRIT PETITION NO. 3167 /2003

PETITIONER : Anand Ram S/o. Sri Kamal Sai
Aged about 31 years
R/o. Vill. Pachira, P.O. Surajpur,
Tah. & P.S. Surajpur Dist- Sarguja

VERSUS

RESPONDENTS :
1) Dayanand Anglo Vedic College Trust and Management Society Chitragupta Raod, New Delhi – 55 Through its President.
2) Regional Director/Manager, School Managing Committee/ Member Disciplinary Committee, Dav Public School, C.G. & M.P Zone, Hudco, Bhilai, Distt. Durg (C.G.)
3) School Managing Comitee, Dav Public School, SECL, Bishrampur area, Governing body of the school, Through its com. SECL, Bishrampur Area/Chairman of the SMC/ Governing Body / Disciplinary Committee
4) Dav Public School SECL, Bishrampur Area, Distt. Surguja (C.G.) through it's principal / secretary, SMC / Member, Committee.
5) Mr. Prashant Kumar, S/o.Mr.G.N. Sahai, Principal aged 42 years, Dav public School, SECL Bishrampur, Distt. Surguja (C.G.)
6) Centrl Board of Secondary Education Shiksha Kendra – 2, Community Centre, Preet Vihar, New Delhi – 92 Through its Secretary.

P. R. No. 9926/03
Presented by Shri S.C. Verma
dated 26/09/03

PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS, DIRECTIONS AND/OR ORDERS

DETAILS OF THE PETITION

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

(94)

Writ Petition No. 3167 of 2003

Petitioner Anand Ram

Versus

Respondents Dayanand Anglo Vedic College & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri S.C. Verma, counsel for the petitioner.

Shri Ashish Shrivastava, counsel with Ms. Smita Ghai, counsel for the respondents.

ORALORDER

(22nd June, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226/227 of the Constitution of India impugns the charge-sheet dated 11.9.2002 (Annexure P/5), the enquiry report dated 17.11.2002 (Annexure P/12) and ultimately the order of termination dated 5.2.2003 (Annexure P/9).

2. The facts of the case, in nutshell, are that the petitioner was appointed as Sweeper, Group-D at D.A.V. Public School, Bishrampur by the respondent No. 2 on regular basis w.e.f. 1.10.1995 by order dated 25.11.1995 (Annexure P/1) in the pay scale of Rs. 750 – 940 + allowances, on probation for a period of two years.

3. The petitioner was served the charge-sheet dated 11.9.2002 (Annexure P/5) containing three charges as prescribed under Clause 42.1 (xx) absenting from work even though present in the school premises or absent without leave, under Clause 42.1 (iii) insubordination and defiance of lawful order and 42.1 (i) habitual late

coming and negligence of duty under the Central Board of Secondary Education-Affiliation Bye-laws 1988.

4. The show cause notice could not be served on the petitioner and the enquiry proceeded exparte. The enquiry report was signed on 17.11.2002 and submitted on 21.11.2002, holding the petitioner as guilty on account of all the aforesaid three charges. A second show cause notice dated 27.11.2002 (Annexure P/7) was issued to the petitioner at school address, along with a copy of the enquiry report to submit his reply before 10.12.2002. The second show cause notice was also not served on the petitioner. Ultimately, by order dated 5.2.2003 (Annexure P/9), service of the petitioner was terminated.

5. The petitioner preferred an appeal before the appellate authority, President, D.A.V. College, Managing Committee, New Delhi on 3.3.2002 (Annexure P/10). The appellate authority dismissed the appeal of the petitioner on the ground that there was no merit in the appeal.

6. Being aggrieved, the petitioner has filed this petition impugning the charge-sheet, enquiry report, termination order and the order dated 10.5.2003 (Annexure P/11) passed in appeal by the appellate authority.

7. Shri S.C. Verma, learned counsel appearing for the petitioner submits that the petitioner was implicated in a false case for an offence under Section 376 (2) of the I.P.C. The petitioner was accordingly arrested on 26.9.2002 and remained in jail till 1.2.2003 when he was released on bail.

8. The respondents/authorities were quite aware that the petitioner was behind the bar and it was not possible for the petitioner to receive the show cause notice and to participate in the departmental enquiry. The respondents/authorities ought to have stayed the departmental

96

proceedings, till the petitioner was made available on release from jail. The show cause notice was sent to the petitioner's address and it could not be delivered. According to the respondents/authorities, the notice of the enquiry was published in the daily newspaper 'Dainik Bhaskar' on 3.11.2002. It does not amount to proper service, as the petitioner was not having facility of the above newspaper inside the jail. Even otherwise, the mother of the petitioner had informed to the Principal/respondent No. 5 by the letter on 18.11.2002 about false implication of the petitioner in a criminal case and his arrest. Learned counsel further submits that the complainant in a criminal case pending trial against the petitioner for an offence punishable under Section 376 (2) of the I.P.C. has already deposed in her statement that the petitioner was not involved in the said offence. The criminal case is pending before the trial court because other accused persons are absconding. Learned counsel heavily relied on a decision of the Supreme Court in the case of **Union of India and others Vs. Dinanath Shantaram Karekar and others** {(1998) 7 Supreme Court Cases 569} in support of his contention that there was no actual service, as the petitioner was in jail and the petitioner was further prevented from taking part in the departmental proceedings.

9. Shri Ashish Shrivastava with Ms. Smita Ghai, learned counsel for the respondents, on the contrary, submit that the service of the petitioner was terminated in accordance with the rules and regulations, as the proper enquiry was held and the petitioner was served show cause notice by way of newspaper publication also. The respondents/authorities were not aware about arrest of the petitioner. The mother of the petitioner had informed to the respondent No. 5 on 18.11.2002 when the matter was closed on 16.11.2002 for submission of the report.

10. I have heard learned counsel for the parties and perused the documents appended to the petition as well as to the return. It is evident that no show cause notice was served on the petitioner, as the petitioner was admittedly arrested on 26.9.2002 and was released on bail on 1.2.2003. Publication of notice of enquiry in newspaper cannot be held as sufficient notice as it is not clear asto whether the newspaper was made available to the petitioner in jail or not.

11. According to the petitioner, no newspaper facility was available to the petitioner inside the jail. The mother of the petitioner informed to the respondent No. 5 on 18.11.2002 before the enquiry report was submitted. Even if, the enquiry was completed on 16.11.2002, the enquiry officer ought to have considered the information of arrest of the petitioner, submitted by mother of the petitioner on 18.11.2002 before submitting the enquiry report on 21.11.2002.

12. In view of the admitted factual position, it can be held that there was no actual service of notice of the enquiry upon the petitioner by the respondents and as such the entire proceedings were vitiated. The Supreme Court in the case of **Union of India and others Vs. Dinanath Shantaram Karekar and others** (Supra), after having considered several cases on the point, observed in para 10, as under:-

> "10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the

charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

13. For the reasons stated-above, the petition stands allowed. The charge-sheet dated 11.9.2002 (Annexure P/5), the enquiry report dated 17.11.2002 (Annexure P/12), the order of termination dated 5.2.2003 (Annexure P/9) and the appellate order dated 10.5.2003 (Annexure P/11) are accordingly quashed.

14. In the facts of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu